

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING**

ORIGINAL

77-1311

To be argued by
JOSEPH P. HOEY

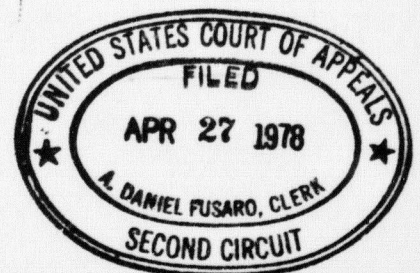
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,
against
SOL RAUCH, MARC RAUCH, LAWRENCE CORSA,
Defendants-Appellants,
and
MARVIN URBAN, a/k/a "MARTY GORDON",
Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PETITION FOR REHEARING

BRADY & TARPEY, P.C.
Attorneys for Appellant
Sol Rauch
130 John Street
New York, N.Y. 10038



UNITED STATES COURT OF APPEALS

Second Circuit

Nos. 744, 773, 774—September Term, 1977.

-----X

UNITED STATES OF AMERICA, :

Appellee, :

-against- :

PETITION FOR
REHEARING

SOL R. RAUCH, MARC RAUCH and :

LAWRENCE CORSA, :

Appellants. :

-----X

To the Honorable Judges of the United States Court of Appeals
for the Second Circuit:

Sol Rauch, the defendant-appellant above named, presents
this, his petition for a rehearing in the above entitled cause,
and, in support thereof, respectfully shows:

I.

The Court, in its opinion of the affirmance herein, has
clearly failed to apply the plain error rule that multiple errors
not excepted to in a trial courts charge may in their totality
constitute reversible error.

II.

The case of Lutwak v. the United States, 344 U.S. 604, 619, 73 S.Ct. 481, 490, 97 L.Ed. 593, 605 (1953), did not, as this Court has assumed in its opinion herein, have the effect of holding that multiple errors in the trial courts charge with respect to: (1) Reasonable doubt; (2) the credibility of a defendant; (3) the actions necessary to establish the crucial element of aiding and abetting; and (4) instructions as to the weight to be afforded to expert testimony constitute a fair trial.

III.

The case of Lutwak v. the United States, 344 U.S. 604, 619, 73 S.Ct. 481, 490, 97 L.Ed. 593, 605 (1953), did not, as this Court has assumed in its opinion herein, have the effect of holding that an indictment may be amended at the time of trial by a superseding information changing the crime charged constitute a harmless error.

IV.

The case of Lutwak v. the United States, 344 U.S. 604, 619, 73 S.Ct. 481, 490, 97 L.Ed. 593, 605 (1953), did not, as this Court has assumed in its opinion herein, have the effect of holding the failure to respond to a jury request for further instruction constitutes a fair trial.

V.

The Court, in its opinion of affirmance herein, has clearly held that the evidence against each party was not of equal weight but misconstrued the adequacy of the evidence as to this defendant-appellant.

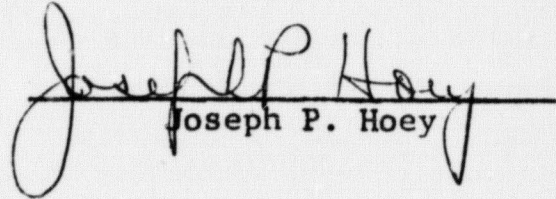
VI.

The case of Lutwak v. the United States, 344 U.S. 604, 619, 73 S.Ct. 481, 490, 97 L.Ed. 593, 605 (1953), which the Court regarded as a conclusive and an "unescapable ruling" in its opinion of reversal herein, is clearly distinguishable from the case at bar.

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for rehearing be granted and that the judgment of the District Court be, upon further consideration, reversed.

Brady & Tarpey, P.C.
Attorney for Petitioner
and Defendant-Appellant
130 John Street
New York, New York 10038
(212) 269-1010

I, Joseph P. Hoey, attorney for Sol R. Rauch, defendant-appellant, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for purpose of delay.


Joseph P. Hoey

STATE OF NEW YORK

COUNTY OF NEW YORK

SOL R. RAUCH being duly sworn, deposes and says: deponent is the defendant-appellant in the within action; deponent has read the foregoing Petition for Rehearing and knows the contents thereof; the same is true to deponent's own knowledge. Defendant-appellant reiterates his innocence and denies any guilt in the action in chief.

Sworn to before me on April 27, 1978



Sol R. Rauch

43

74

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box ☐ Certification By Attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ Attorney's Affirmation shows: deponent is

the attorney(s) of record for in the within action: deponent has read the foregoing and knows the contents thereof: the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

being duly sworn, deposes and says: deponent is the in the within action: deponent has read the foregoing and knows the contents thereof: the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

☐ Individual Verification

☐ Corporate Verification the of a corporation. in the within action: deponent has read the foregoing and knows the contents thereof: and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on

19

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

MICHAEL W. O'SULLIVAN

being duly sworn, deposes and says: deponent is not a party to the action.

is over 18 years of age and resides at

11-22 130 STREET, COLLEGE POINT, NEW YORK

☒ Affidavit of Service By Mail On APRIL 27 19 78 deponent served the within PETITION FOR REHEARING upon UNITED STATES ATTORNEYS OFFICE ONE CADMAN PLAZA, BROOKLYN, N.Y. attorney(s) for UNITED STATES on this action. at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Check Applicable Box ☐ Affidavit of Personal Service On 19 at deponent served the within upon

herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on

APRIL 27

19

78

The name signed must be printed beneath

MICHAEL W. O'SULLIVAN

NOTICE OF ENTRY

Sir: Please take notice that the within is a (certified)
true copy of a
duly entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

Brady, Jarpey, Hoey, P.C.

Attorneys for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on

19

at

M.

Dated,

Yours, etc.,

Brady, Jarpey, Hoey, P.C.

Attorneys for

Office and Post Office Address

To

Attorney(s) for

Index No.

Year 19

UNITED STATES OF AMERICA

Appellee,

-against-

Sol R. Rauch, Marc Rauch and

Lawrence Corsa,

Appellants.

PETITION FOR REHEARING

Brady, Jarpey, Hoey, P.C.

Attorneys for **Petitioner and Defendant-Appellant**

Office and Post Office Address, Telephone

130 John Street

New York, New York 10038

(212) 269-1010

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for